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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,712	12/28/2000	James E. Parker	VTECH-48514	9398

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I. Morley Drucker  
FULWIDER PATTON LEE & UTECHT, LLP  
6060 Center Drive, Tenth Floor  
Los Angeles, CA 90045

EXAMINER
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SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/752,712	<b>Applicant(s)</b> PARKER, JAMES E.	
	<b>Examiner</b> Samuel P. Siefke	<b>Art Unit</b> 1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15,16,18,20,21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15,16,18,20,21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

The amendment filed 12/12/05 has been entered. The current pending claims are 15, 16, 18, 20, 21 and 23.

### ***Claim Objections***

Claims 18 and 23 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Independent claims 15 and 20 already have limitations for an assay strip comprising a wicking material for conducting the liquid sample from the said wick to said assay region of said assay strip.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1743

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **15, 16, 18, 20, 21** and **23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong (USPN 6,627,152) in view of Forsberg et al. (USPN 6,168,758) and Sayles (USPN 5,501,837).

Wong discloses a fluid testing apparatus for collecting and analyzing a liquid sample for an analyte in the liquid sample, the apparatus comprising: a container (20) having an interior sample chamber with a liquid sample space (38), said container having a surface defining an opening (34) in communication with said interior sample chamber, a cap (70, transparent, claim 4) adapted to be placed on said container opening for closing said container opening and sealing said container (fig. 1), an assay strip (120) disposed in said cap, said assay strips having an assay region disposed in said cap for indicating the presence or absence of multiple analytes in a liquid sample placed in said liquid sample space of said interior chamber and said cap (col. 4, lines 40-61), including a separator member (88) disposed between said assay strip and said interior sample chamber for separating said liquid sample space from said assay region of said assay strip; and a wick (end of assay strip is pad that is used to draw liquid from container into the assay region to the assay test strip; col . 4, lines 32-36) mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container, said wick being in fluid communication with

said assay strip for conducting a portion of the liquid sample from said interior chamber to said assay region of said assay strip (col. 4, lines 32-36).

Wong does not teach using an "annular" bridging member to link the assay strip to the wicking member in a fluid communication fashion.

Forsberg teaches a liquid sample assay device that comprises a container for collecting the sample liquid to be analyzed, a removable cap for sealing the container 7, the cap includes one or more test strips 5. At least one liquid permeable main wick 3 is provided for transporting the sample liquid through the passageway 14. The wicks 3 transport the sample liquid 30, by capillary action, from the reservoir to a plurality of bridging wick pads 4, as discussed in more detail below. If only a single type of test is being conducted, it will be understood that only one wick would be required. Similarly, one wick can be used to supply liquid to a plurality of test strips. Figure 2, shows 4 bridging wick pads disposed in a pattern which defines the outer sides of a regular polygon such as a square. Forsberg further teaches an indentation 12 which is formed over each of the passageways 14 on the top surface of the cap 7. The indentations 12 are each sized to accept a wick pad 4 which is formed of a non-woven glass fibre material through which the sample liquid will move by capillary faction. The wick pads 4 are located adjacent to the assaying device which may comprise a plurality of known liquid test strips 5, and function to draw liquid up through the wicks 3 and to transfer sample liquid 30 to the test strips 5 which are located on the cap 7. A wicking system comprising the main wicks 3, the bridging wick pads 4 provides transferring means for transferring sample liquid 30 from the reservoir 18 to the test strips 5. The bridging

wick of Fosberg provides a fluid communication between the main wicks 3 and the test strips 5 (see figure 2 specifically because of circular configuration). The bridging wick pads of Forsberg perform the same function of the annular bridging wick of the instant application. Webster's Ninth New Collegiate Dictionary defines annular, "of, relating to, or forming a ring." In figure 2, it appears that the bridging wick pads 4 form a ring. The 4 wicking pads create an open center which would provide the opening of the ring. Annular bridging wicks are well known in the art for either providing fluid communication between a main wick and a test strip or an annular perimeter wick for absorbing excess sample liquid to prevent the test strips from being flooded (see fig. 2, ref. 6, col. 6, lines 30-37). See also Sayles who teaches an annular wick 38 in contact with test strips 32. It would have been obvious to one having ordinary skill in the art to modify Wong in view of Fosberg or Sayles to provide an "annular" bridging wick between the main wick and test strips to aid in drawing fluid from the wicks 3 by capillary action and supplying the test strips 5 with a sample fluid (Sayles, column 4, lines 20-24; Forsberg, column 6, lines 7-27).

### ***Response to Arguments***

Applicant's arguments with respect to claims 15,16,18,20,21 and 23 have been considered but are moot in view of the new ground(s) of rejection. The Examiner has addressed the limitations to the claims in the above rejections.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P. Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke



March 1, 2006

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700